

destroyed and the claimant has given the court assurance of good behavior in the future. Such a promise does not relieve the goods from liability for past actions and the case is not moot so long as the demand of the United States for condemnation of the goods remains unheard. Under the circumstances, we think that the trial court was not clothed with discretion or authority to decline jurisdiction. It should proceed to hear and determine the charges contained in the libel upon the merits since the right of a party litigant to the judgment of a court upon a matter properly before it is a fundamental aim of the law. *Cohen v. Virginia*, 6 Wheaton 264, 404, 5 L. Ed. 256, 257; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 40, 29 S. Ct. 192, 53 L. Ed. 382, 48 L. R. A., N. S., 1134, 15 Ann. Cas. 1034; *McClellan v. Carland*, 217 U. S. 268, 282, 30 S. Ct. 501, 54 L. Ed. 762; 35 Am. Jur. (Mandamus) § 254, p. 25.

"The judgment of the District Court is reversed and the case remanded for further proceedings.

"Reversed."

Thereafter, on September 12, 1945, claimant having joined in requesting entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

1585. Misbranding of Boncquet Tablets. U. S. v. 83 Bottles and 103 Bottles of Boncquet Tablets, and a quantity of printed matter. Default decree of condemnation and destruction. (F. D. No. 3677. Sample Nos. 26587-E, 26588-E.)

LIBEL FILED: January 21, 1941, Western District of Washington.

ALLEGED SHIPMENT: Between the approximate dates of July 15 and November 6, 1940, by the Boncquet Laboratories, from Glendale, Calif.

PRODUCT: 83 400-tablet bottles and 103 150-tablet bottles of *Boncquet Tablets* at Seattle, Wash., together with a number of circulars entitled "Adds New Fighting Blood in 9 Days" and a number of placards and display cards.

Analysis showed that the product consisted essentially of yeast, milk sugar, salt, and desiccated green leaf and stem plant material, containing total iron 0.01 grain, total calcium calculated as calcium oxide 0.09 grain, total phosphorus calculated as phosphorus pentoxide 0.19 grain, and protein approximately 3 grains per tablet.

NATURE OF CHARGE: Misbranding, Section 502 (a), because of false and misleading curative and therapeutic claims in the labeling, substantially the same as those contained in the labeling of the same product reported in notices of judgment on drugs and devices, No. 1584.

Further misbranding, Section 502 (a), certain designs and statements in the labeling were false and misleading since they represented and suggested that the article contained the active principles of raw liver, vegetable iron, vitamin B complex, fortified with pure crystalline B and G, and assimilable calcium and phosphorus in therapeutically significant amounts. The article did not contain the ingredients mentioned in therapeutically significant amounts. Further misbranding, Section 502 (e) (2), the label of the article failed to bear the common or usual name of each active ingredient.

DISPOSITION: On March 27, 1941, Boncquet Laboratories having appeared as claimant, and stipulation having been entered between the United States attorney and the claimant for change of venue, the case was ordered transferred to the Northern District of California. On April 4, 1942, the case having been called and the claimant having failed to appear, judgment of condemnation was entered and the product was ordered destroyed.

1586. Misbranding of "666." U. S. v. 79 Dozen Bottles of "666" (and 10 other seizure actions against "666"). Decrees of condemnation and destruction. (F. D. C. Nos. 13086 to 13089, incl., 13801, 14650, 14664, 14665, 14849, 14862, 14863, 15280, 15724, 15804. Sample Nos. 72889-F to 72892-F, incl., 72896-F, 90145-F to 90148-F, incl., 90150-F, 90164-F to 90166-F, incl., 20312-H, 22320-H, 22321-H, 23814-H.)

LIBELS FILED: Between the approximate dates of July 31, 1944, and April 7, 1945, Northern Districts of Texas and California, Western District of Arkansas, Eastern District of Oklahoma, and District of Kansas.

ALLEGED SHIPMENT: Between the approximate dates of November 9, 1942, and May 29, 1944, by the Monticello Drug Co., from New Orleans, La.

PRODUCT: 324½ dozen bottles of "666," bottled in 3-ounce and 6-ounce containers and located at Dallas, Tex., San Francisco, Calif., Texarkana, Ark., Hot Springs, Ark., Nashville, Ark., Muskogee, Okla., Rogers, Ark., and Wichita, Kans.